

## § 2.710

## 10 CFR Ch. I (1–1–14 Edition)

requirements of § 73.21 and the requirements of § 73.22 or § 73.23 of this chapter, as applicable.

(4) The presiding officer may also prescribe additional procedures to effectively safeguard and prevent disclosure of Safeguards Information to unauthorized persons with minimum impairment of the procedural rights which would be available if Safeguards Information were not involved.

(5) In addition to any other sanction that may be imposed by the presiding officer for violation of an order issued pursuant to this paragraph, violation of a provision for the protection of Safeguards Information from unauthorized disclosure that is contained in an order may be subject to a civil penalty imposed under § 2.205.

(6) For the purpose of imposing the criminal penalties contained in Section 223 of the Atomic Energy Act of 1954, as amended, a provision for the protection of Safeguards Information from unauthorized disclosure that is contained in an order issued pursuant to this paragraph is considered to be issued under Section 161b of the Atomic Energy Act of 1954, as amended.

(g) A ruling by the presiding officer or the Commission for the production of a record or document will specify the time, place, and manner of production.

(h) A request under this section may not be made or entertained before the matters in controversy have been identified by the Commission or the presiding officer, or after the beginning of the prehearing conference held under § 2.329 except upon leave of the presiding officer for good cause shown.

(i) The provisions of § 2.705 (c) and (e) apply to production of NRC records and documents under this section.

[69 FR 2256, Jan. 14, 2004, as amended at 73 FR 63568, Oct. 24, 2008; 77 FR 46597, Aug. 3, 2012]

### § 2.710 Motions for summary disposition.

(a) Any party to a proceeding may move, with or without supporting affidavits, for a decision by the presiding officer in that party's favor as to all or any part of the matters involved in the proceeding. Summary disposition motions must be filed no later than 20

days after the close of discovery. The moving party shall attach to the motion a short and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be heard. Any other party may serve an answer supporting or opposing the motion, with or without affidavits, within 20 days after service of the motion. The party shall attach to any answer opposing the motion a short and concise statement of the material facts as to which it is contended there exists a genuine issue to be heard. All material facts set forth in the statement required to be served by the moving party will be considered to be admitted unless controverted by the statement required to be served by the opposing party. The opposing party may, within 10 days after service, respond in writing to new facts and arguments presented in any statement filed in support of the motion. No further supporting statements or responses to the motion will be entertained.

(b) Affidavits must set forth the facts that would be admissible in evidence, and must demonstrate affirmatively that the affiant is competent to testify to the matters stated in the affidavit. The presiding officer may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories or further affidavits. When a motion for summary decision is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of his answer. The answer by affidavits or as otherwise provided in this section must set forth specific facts showing that there is a genuine issue of fact. If no answer is filed, the decision sought, if appropriate, must be rendered.

(c) Should it appear from the affidavits of a party opposing the motion that he or she cannot, for reasons stated, present by affidavit facts essential to justify the party's opposition, the presiding officer may refuse the application for summary decision, order a continuance to permit affidavits to be obtained, or make an order as is appropriate. A determination to that effect must be made a matter of record.

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(d)(1) The presiding officer need not consider a motion for summary disposition unless its resolution will serve to expedite the proceeding if the motion is granted. The presiding officer may dismiss summarily or hold in abeyance untimely motions filed shortly before the hearing commences or during the hearing if the other parties or the presiding officer would be required to divert substantial resources from the hearing in order to respond adequately to the motion and thereby extend the proceeding.

(2) The presiding officer shall render the decision sought if the filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with the statements of the parties and the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law. However, in any proceeding involving a construction permit for a production or utilization facility, the procedure described in this section may be used only for the determination of specific subordinate issues and may not be used to determine the ultimate issue as to whether the permit shall be issued.

(e) The presiding officer shall issue an order no later than forty (40) days after any responses to the summary disposition motion are filed, indicating whether the motion is granted, or denied, and the bases therefore.

[69 FR 2256, Jan. 14, 2004, as amended at 77 FR 46598, Aug. 3, 2012]

### §2.711 Evidence.

(a) *General.* Every party to a proceeding has the right to present oral or documentary evidence and rebuttal evidence and to conduct, in accordance with an approved cross-examination plan that contains the information specified in paragraph (c) of this section, any cross-examination required for full and true disclosure of the facts.

(b) *Testimony.* The parties shall submit direct testimony of witnesses in written form, unless otherwise ordered by the presiding officer on the basis of objections presented. In any proceeding in which advance written testimony is to be used, each party shall serve copies of its proposed written testimony

on every other party at least fifteen (15) days in advance of the session of the hearing at which its testimony is to be presented. The presiding officer may permit the introduction of written testimony not so served, either with the consent of all parties present or after they have had a reasonable opportunity to examine it. Written testimony must be incorporated into the transcript of the record as if read or, in the discretion of the presiding officer, may be offered and admitted in evidence as an exhibit.

(c) *Cross-examination.* (1) The presiding officer shall require a party seeking an opportunity to cross-examine to request permission to do so in accordance with a schedule established by the presiding officer. A request to conduct cross-examination must be accompanied by a cross-examination plan containing the following information:

(i) A brief description of the issue or issues on which cross-examination will be conducted;

(ii) The objective to be achieved by cross-examination; and

(iii) The proposed line of questions that may logically lead to achieving the objective of the cross-examination.

(2) The cross-examination plan may be submitted only to the presiding officer and must be kept by the presiding officer in confidence until issuance of the initial decision on the issue being litigated. The presiding officer shall then provide each cross-examination plan to the Commission's Secretary for inclusion in the official record of the proceeding.

(d) *Non-applicability to subpart B proceedings.* Paragraphs (b) and (c) of this section do not apply to proceedings initiated under subpart B of this part for modification, suspension, or revocation of a license or to proceedings for imposition of a civil penalty, unless otherwise directed by the presiding officer.

(e) *Admissibility.* Only relevant, material, and reliable evidence which is not unduly repetitious will be admitted. Immaterial or irrelevant parts of an admissible document will be segregated and excluded so far as is practicable.

(f) *Objections.* An objection to evidence must briefly state the grounds of objection. The transcript must include